

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

FILED
DISTRICT COURT OF GUAM

OCT - 6 2006

MARY L.M. MORAN
CLERK OF COURT

JOHN G. MANIBUSAN,

Defendant-Petitioner,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

CRIMINAL CASE NO. 89-00104

PETITIONER'S TRAVERSE TO
GOVERNMENT'S RESPONSE

The Petitioner, John G. Manibusan, respectfully files this traverse to the government's response, to object to a number of government misrepresentations and misleading arguments contained in the government's response to Petitioner's § 2255 motion.

Petitioner contends that he does not know the legal format and/or language for filing motions or responses, and is without the aid of the inmate who helped him to file the initial § 2255 brief due to his placement in the SHU, Special Housing Unit, under investigation. However, Petitioner will do his best to respond to the government's false contentions contained in their response.

Petitioner's first objection is to the government's claim that he was transferred to a federal penitentiary on April 21, 1999. That is false. Petitioner contends that he was transferred to the newly opened federal detention facility (F.D.F.) on January 11, 1999 to continue his federal sentence.

Secondly, Petitioner contends that the government's claim that he should have known that his federal sentence was going to run

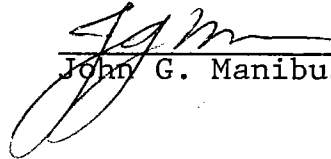
consecutive to the local charges because of the federal detainer that was lodged against him is without merit. Petitioner alleges that the detainer in question was lodged against him, not for the purpose stated by the government, but to ensure that in case Petitioner was given bail in the local proceeding and/or was found not guilty on the local charges, Petitioner would still be held in custody. The government also claims that Petitioner should have known that his federal sentence was running consecutively to his local charge because he was transferred to F.D.F. and did not initiate any action to contest his sentence. Again, to Petitioner's understanding, he was ordered to start serving his federal sentence after his local trial. See sentencing hearing transcript, pg. 24 lines 13-25; and pg. 25 line 1-4, 10-13. Due to the advice given by the sentencing judge, Petitioner was under the impression that his time was running as judge Dvenas had ordered it to run. Petitioner did not and could not have known that his time was not running consecutively until he was told he had no parole because he was under the new law, which occurred while he was in F.C.I. Talladega, AL, after which petitioner quickly sought his sentencing transcripts and started to contest his sentence. Petitioner contends that his federal sentence started to run when judge dvenas ordered it to start and that Petitioner could not have logically known otherwise until he was violated. Wherefore Petitioner's one year time period for filing an objection could not have logically began to run until he has was aware of the violation.

Finally, the government agrees that the court did violate Federal Rules of Criminal Procedure 11. Petitioner contends that had he been

properly advised of his rights under Federal Rule of Criminal Procedure 11, he would not have pleaded guilty. Petitioner could not allege any wrongdoing because he was not properly advised as to when his federal time would start to run after his local trial regardless of the outcome of said trial.

Dated: September ¹⁴ 14, 2006.

Respectfully Submitted


John G. Manibusan

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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

* * *

UNITED STATES OF AMERICA,)	COURT OF APPEALS
)	CASE NO.
Plaintiff,)	
)	
vs -)	CASE NO. CR89-00104
)	
JOHN G. MANIBUSAN,)	
)	
Defendant.)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE
THE HONORABLE CRISTOBAL C. DUENAS
Senior District Judge

SENTENCING HEARING
FRIDAY, MARCH 16, 1990

1 **APPEARANCES:**

2

3 FOR THE PLAINTIFF:

4 UNITED STATES ATTORNEY
5 BY: FREDERICK A. BLACK, Esq.
6 Assistant United States Attorney
7 Fifth Floor, PDN Building
8 238 Archbishop Flores Street
9 Agana, Guam 96910

10 FOR THE DEFENDANT:

11 MICHAEL F. PHILLIPS, ESQ.
12 Attorney at Law
13 Suite 215, Union Bank Building
14 Agana, Guam 96910

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Wanda M. Miles, Official Court Reporter
District Court of Guam

520 W. Soledad Avenue, Hagatna, Guam 96910

1 original sentence, but it is in addition to the
2 sentence of 12 years. You understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And it might be worth your while
5 to bear in mind that since the sentence imposed by the
6 court antedates the effective date of the Sentencing
7 Guidelines, parole is still available to you. So it's
8 up to you how to conduct yourself during the term of
9 your incarcerating.

10 The defendant will be returned to the custody
11 of the local authorities because he's now being tried
12 for a local criminal matter. But ensuing the
13 commencement of that -- I mean ensuing the completion
14 of that case, once it reaches its finality, regardless
15 of what the sentence is, the defendant will be turned
16 over to the custody of the U.S. Marshal to commence the
17 serving of his sentence. And should he be convicted, I
18 don't know what the sentence of the Superior Court is,
19 they might say that the sentence imposed by the court
20 should run concurrent with this sentence, or they might
21 decide that he will serve his sentence upon the
22 conclusion of his sentence in this court, so it will be
23 up to the local authorities.

24 But you will return to the local authorities
25 for the purpose of going through his trial, and once

1 that ~~trial~~ is completed regardless of what the
2 disposition is, even if he were acquitted, he should be
3 turned over to the custody of the U.S. Marshal to serve
4 the sentence imposed by this court under this case.

5 Any questions?

6 MR. PHILLIPS: No, Your Honor.

7 THE DEFENDANT: No.

8 THE COURT: You will now be turned over to the
9 custody of the local authorities for the purpose of
10 standing trial. But bear in mind that you will be
11 turned over to the custody of the U.S. Marshal upon the
12 completion of that criminal ~~trial~~, regardless of what
13 the outcome is.

14 Court will stand in recess.

15 MR. PHILLIPS: Thank you, Your Honor.

16 (Proceedings concluded at 3:26 p.m.)

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CERTIFICATE OF REPORTER

CITY OF AGANA)
) ss.
TERRITORY OF GUAM)

I, Wanda M. Miles, Official Court Reporter
of the District Court of Guam, do hereby certify the
foregoing pages 1-25, inclusive, to be a true and
correct transcript of the shorthand notes taken by me
of the within-entitled proceedings, at the date and
time therein set forth.

Dated this 11th day of April, 2005.

Wanda M. Miles

Wanda M. Miles, Official Court Reporter
District Court of Guam
520 W. Soledad Avenue, Hagåtña, Guam 96910